

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

HEATHER SWEAT, Individually and as  
Assignee of the rights of RAY BUNYON  
SIMS, JR., (Assignor),

Plaintiff,

v.

SOUTHERN UNITED FIRE INSURANCE  
COMPANY,

Defendant.

CIVIL ACTION NO. 08av99999

**NOTICE OF REMOVAL**  
**Jury Trial Demanded**

Defendant Southern United Fire Insurance Company (herein referred to as “Southern United”) hereby removes this action to the United States District Court for the District of South Carolina, Charleston Division, pursuant to 28 U.S.C. § 1441, *et seq.* In support of the removal, Southern United states the following facts, which show that this case is properly removable:

1. Plaintiff originally filed this action in the State of South Carolina Court of Common Pleas for Berkeley County. The action is entitled “*Heather Sweat, Individually and as Assignee of the Rights of Ray Bunyon Sims, Jr., v. Southern United Fire Insurance Company.*” Civil Action No. 2008-CP-08-1501.

2. Pursuant to 28 U.S.C. § 1446(a), copies of the process and pleadings in this action are attached hereto as **Exhibit A**, and are incorporated herein by reference as if fully set forth.

3. Defendant filed this Notice of Removal within thirty days of when it was ascertainable that this case was removable. This removal is based on the complete diversity of citizenship of the parties.

4. This removal is timely pursuant to 28 U.S.C. § 1446(b). Service of the Summons and Complaint was accepted by the South Carolina Department of Insurance on June 13, 2008 pursuant to the provisions of S.C. Code Ann. § 38-5-70 (Supp. 2003). *See Exhibit B.*

### **PARTIES**

5. Upon information and belief, Plaintiff is now and was at the time of the filing of the complaint, a citizen and resident of the County of Berkeley, South Carolina. *See* Complaint, p. 1, ¶ 2, attached as **Exhibit A.**

6. At the time this action was commenced, Defendant Southern United, was, and still is an Alabama Corporation with its principal place of business in Mobile, Alabama.

### **JURISDICTION**

7. The United States District Court for the District of South Carolina has original jurisdiction over Plaintiff's Complaint pursuant to 28 U.S.C. § 1332. Diversity exists when the citizenship of only properly joined defendants is considered. Therefore, complete diversity of citizenship exists between all parties to this action, and this action is one that may be removed to this Court pursuant to 28 U.S.C. § 1441.

8. In this action, Plaintiff asserts claims of negligent failure to settle, bad faith, and breach of contract and fiduciary duty all arising out of an incident that occurred on February 13, 2006 whereby Plaintiff was injured in an automobile accident which involved Ray Bunyon Sims, Jr. who was insured by Southern United. Mr. Sims had primary coverage through Southern United in the amount of \$15,000.00. Southern United investigated the property damage and bodily injury claims submitted and subsequently offered Plaintiff policy limits of \$15,000.00 before trial, which she rejected.

A trial in this matter resulted in a \$65,000.00 verdict for the Plaintiff on October 16, 2007. Ultimately, Southern United issued an unconditional check to the Plaintiff for \$15,000.00 which exhausted the limits under the policy. On January 11, 2008 Mr. Sims entered into an Assignment and Release Agreement with Plaintiff, attached hereto as **Exhibit C** and Plaintiff subsequently filed this action pursuant to the terms thereto.

Based on the allegations contained in Plaintiff's pleadings, the amount in controversy in this action, exclusive of interest and costs, appears to a reasonable legal certainty to exceed the sum of \$75,000.00.

9. Because complete diversity of citizenship exists between all proper parties to this action, and the amount in controversy in this case appears to a reasonable legal certainty to be in excess of \$75,000.00, exclusive of interest and costs, this action is removable pursuant to 28 U.S.C. § 1441(a).

10. A copy of this Notice of Removal is being served on Plaintiffs and filed with the Clerk of Court of Common Pleas for Berkeley County, where this case was originally filed.

### **CONCLUSION**

WHEREFORE, Southern United prays that the filing of this Notice of Removal with this Court and the filing of the Notice of Removal with the South Carolina State Court of Common Pleas for Berkeley County shall effect the removal of said suit to this Court. If any question arises as to the propriety of the removal of this action, Southern United requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

[signature page to follow]

Pierce, Hems, Sloan, & McLeod, LLC  
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s/ Christopher P. Deters  
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Charleston, South Carolina

July 3, 2008.